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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALBERT RICE,
 Plaintiff,

vs.

GENERAL ELECTRIC COMPANY, and
 DOES 1-300,
 Defendants.

No. C05-4998 JSW

JOINT MOTION AND STIPULATION TO
 STAY PROCEEDING OR, IN THE
 ALTERNATIVE, TO CONTINUE CASE
 MANAGEMENT DEADLINE AND
 CONFERENCE, AND TO EXTEND TIME;
~~[PROPOSED]~~ ORDER TO STAY;
~~[PROPOSED ALTERNATIVE]~~ ORDER
 TO CONTINUE

Pursuant to Civil L. R. 7-11 and 7-12, the following parties hereby stipulate to, and respectfully move the Court for, an Order extending time as set forth in the *Order Setting Initial Case Management Conference* filed December 5, 2005 (Document 2), for the following good cause:

On January 10, 2006, Defendant GENERAL ELECTRIC COMPANY filed Document 5, a Notice to Tag Along Action regarding the pending Multidistrict Litigation (“MDL”) in the Eastern District of Pennsylvania, seeking among other things, to move Jurisdiction of this matter to that District.

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On July 29, 1991, the Judicial Panel on Multidistrict Litigation (“JPML”) entered an order transferring all asbestos personal injury cases pending in the federal courts to the United States District Court for the Eastern District of Pennsylvania, for coordinated pretrial proceedings pursuant to 28 U.S.C. § 14097. That order also applies to “tag-along actions,” or actions involving common questions of fact filed after January 17, 1991. Such actions are to be transferred to the eastern District of Pennsylvania as part of MDL 875, for coordinated pretrial proceedings.

The JPML has held that a district court has the authority to stay pending a transfer order. *In re Asbestos Products Liability Litigation*, 170 F. Supp. 2d 1348, 1349 n.1 (J.P.M.L. 2001) (“[T]hose courts concluding that such issues should be addressed by the transferee judge need not rule on them, and the process of 1407 transfer in MDL-875 can continue without any unnecessary interruption or delay.”)

The parties agree that it is likely that the JPML will transfer this matter to the Eastern District of Pennsylvania.

However, to date, the Clerk of the JPML has not entered a *Conditional Transfer Order* pursuant to JPML Rule 12(a) or filed an order to show cause why the action should not be transferred, pursuant to JPML Rule 13(b).

It is likely the dates set forth in the *Order Setting Initial Case Management Conference* filed December 5, 2005 (Document 2), including the deadlines imposed by Federal Rules of Civil Procedure 26, will come to pass before the Clerk of the JPML acts.

In addition, it has come to the attention of counsel that the Judge assigned to hear the cases pending in MDL 875, the Honorable Charles R. Weiner of the Eastern District of Pennsylvania, has recently passed away and that the Clerk of that Court has reported a backlog in cases transferred to that Court by the MDL panel.

The parties make this Motion on the grounds that a stay of this action would (a) promote judicial efficiency, (b) allow consistency in pretrial rulings, and (c) be most convenient to the parties.

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Due to the pending action by the Clerk of the JPML, the parties hereby STIPULATE to and respectfully request the Court VACATE its *Order Setting Initial Case Management Conference* filed December 5, 2005 (Document 2), and that the Court issue an Order STAYING this action pending the outcome of the MDL Panel's decision on the merits of the transfer.

In the alternative, the parties hereby STIPULATE to and respectfully request that the dates set forth in the *Order Setting Initial Case Management Conference* filed December 5, 2005 (Document 2), be vacated and continued pending the outcome of the JPML's decision on the merits of the transfer. Specifically, these deadlines include the **February 17, 2006** deadline to meet and confer, and file Joint ADR Certification, the **March 3, 2006** Deadline to complete Initial Disclosures, the **March 3, 2006** deadline to file the Joint Case Management Statement and the Case Management Conference currently set for **March 10, 2006**.

Dated: January 19, 2006

BRAYTON❖PURCELL LLP

/s/ David R. Donadio

By:

David R. Donadio
Attorneys for Plaintiffs

Dated: January 21, 2006

SEDGWICK, DETERT, MORAN &
ARNOLD, LLP

/s/ Damon McClain

By:

Damon McClain
Attorneys for Defendant
GENERAL ELECTRIC COMPANY

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[PROPOSED] ORDER TO STAY

IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Order Setting Initial Case Management Conference* filed December 5, 2005 (Document 2), are hereby VACATED and that this action is STAYED pending the outcome of the JPML's decision on the merits of the transfer.

Dated: January 26, 2006


Jeffrey S. White
United States District Court Judge

~~[PROPOSED ALTERNATIVE] ORDER TO CONTINUE~~

~~IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Order Setting Initial Case Management Conference* filed December 5, 2005 (Document 2), are hereby VACATED.~~

~~IT IS FURTHER ORDERED that the following case management deadlines are continued as follows:~~

~~1. Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan is [set for a date on or after July 1, 2006 to wit]: _____, 2006;~~

~~2. Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference is [set for a date on or after July 1, 2006 to wit]: _____, 2006;~~

~~3. Last day to complete initial disclosures or state objection to Rule 26(f) Report, file/serve Case Management Statement and file/serve Rule 26(f) Report is [set for a date on or after July 1, 2006 to wit]: _____, 2006; and~~

~~4. The Case Management Conference is set for [a date on or after July 1, 2006 to wit]: _____ 2006 at 1:30 p.m., Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San Francisco, California.~~

Dated: _____

Jeffrey S. White
United States District Court Judge